STATE OF MICHIGAN
IN THE SUPREME COURT
(On Appeal from the Court of Appeals
Holbrook, P.J., and McDonald and Saad, JJ)

PITTSFIELD TOWNSHIP,
Plaintiff/Appellee,

v

WASHTENAW COUNTY,

Defendant/Appellant,

v

CITY OF ANN ARBOR,

Defendant,

and

MICHIGAN ASSOCIATION OF COUNTIES,
Amicus Curiae Applicant.

Supreme Court Docket
No. 119590

Michigan Court of Appeals
Docket No. 219480

Washtenaw County Circuit
Court 98-9690-CE

BRIEF OF AMICUS CURIAE, MICHIGAN ASSOCIATION OF COUNTIES

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INTEREST OF AMICI CURIAE

The Amici Curiae in this brief are the Michigan Association of Counties ("MAC"). The MAC is comprised of all eighty-three (83) Michigan counties. The purpose of the MAC is the improvement of municipal government and administration through cooperative effort.

In Pittsfield Charter Twp v Washtenaw County, 246 Mich App 356, 633 NW2d 10 (2001), the Michigan Court of Appeals reversed the Washtenaw County Circuit Court and held, inter alia, that in the construction of county buildings, a county is subject to the zoning regulations of the township in which the building is to be located. Amici Curiae is concerned about the effect of the Court of Appeals' decision on the basic operations and administration of municipal government. This case potentially has major significance for every county in Michigan. It will directly impact on the ability of Michigan counties to fulfill their constitutional and statutory obligations to construct and maintain a plethora of county facilities in furtherance of the public good, including, but not limited to court facilities and county jails.

The Amici contend that the Court of Appeals' decision on the issue described above was in error and has, and could continue, to result in Michigan counties suffering financial harm, and potential gridlock in the ability of Michigan counties to undertake construction of new county buildings and in the repair of existent county buildings. Therefore, the Amici Curiae requests that upon consideration of the Appellants' appeal, this Court reverse the Court of Appeals' decision.

QUESTIONS PRESENTED

1. WHETHER THIS COURT SHOULD REVERSE THE COURT OF APPEALS' DECISION THAT IN THE SITING OF COUNTY BUILDINGS, COUNTIES ARE SUBJECT TO THE ZONING REGULATIONS OF THE TOWNSHIPS IN WHICH SUCH PROJECTS ARE LOCATED.

   The Amici Curiae answers "Yes."

   Defendant/Appellant answers "Yes"

   Plaintiff/Appellee answers "No."

2. IF THIS COURT WERE TO UPHOLD THE COURT OF APPEALS' DECISION, SHOULD THIS COURT ADOPT A "BALANCING APPROACH" TEST.

   The Amici Curiae answers "Yes."

   Defendant/Appellant answers "Yes."

   Plaintiff/Appellee has not specifically addressed this issue.

INTRODUCTION

The subject of this Amici Curiae Brief is a published decision of the Michigan Court of Appeals rendered in Pittsfield Charter Twp v Washtenaw County, 246 Mich App 356; 633 NW2d 10 (2001) (the "Court of Appeals' Decision"), which reversed the ruling of the Washtenaw County Circuit Court in Pittsfield Charter Twp v Washtenaw County, Washtenaw County Circuit Court Case No. 98-9690-CE (the "Circuit Court Decision").

The Court of Appeals' Decision in this matter broadly requires a county to comply with a township's zoning regulations in the construction of any county facility. The opinion of the Court of Appeals does not limit itself merely to the issue of the construction of county buildings which a county may, in its discretion, construct but which the county has no constitutional or statutory duty to construct (such as a homeless shelter). Rather, the clear implication of the Court of Appeals' Decision is that a county must submit to local zoning regulations in the siting of county facilities even where: (1) such county governmental functions are constitutionally required; (2) facilities are mandated by statute; and, (3) the governmental service and attendant county facility is at the core of the governmental functions of a county. The Court of Appeals' Decision opines:

> As part of the comprehensive legislation dealing with counties, Section 11 enumerates the broad powers granted by the Legislature to the county boards, and those subsections relevant to our inquiry provide that a county board of commissioners may:
>
> > (b) Determine the site of, remove, or designate a new site for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat.
> >
> > and:
> >
> > (d) Erect the necessary buildings for jails, clerks" offices, and other county buildings, and prescribe the time and manner of erecting them.

> We are not persuaded that this grant of authority to site and use property for county purposes means that a county may do so in derogation of any and all laws, including local zoning laws. If the Legislature meant to say that the county"s power to site and use its property is plenary (not subject to but exempt from any legal restrictions), the Legislature could have easily and expressly said so. It did not and we conclude that it is neither permissible nor appropriate for use to graft such a plenary gloss on this statutory provision.

Court of Appeals' Decision, 246 Mich App at 361-362.

The effect of the Court of Appeals' Decision has thus far been, and will undoubtedly continue to be, detrimental to the delivery of public services by counties. Michigan counties have already suffered financial harm, and unnecessary delays in the construction of necessary new county buildings and in the repair of existing county buildings as a result of the Court of Appeals' Decision.

The maxim in the real estate profession "location, location, location" applies to counties in the siting of public buildings for the public welfare. For example, the siting of courthouses in urban areas and close to county jails is important to counties, the residents of counties and the effective and efficient administration of county courts. Courthouses should be located in proximity to the residents of the county for the convenient administration of justice for parties, jurors and attorneys. Further, proximity of jails and prosecuting attorney offices to court facilities is important to minimize the expenses associated with transport of jail inmates to court hearings. Thus, as is apparent by the Legislature's grant of authority to counties in MCL 46.11, the siting courts, and the location of other county buildings must focus on a county's determination as to what location will maximize the convenience of the residents whom the county services are designed to serve in an effort to maximize resident utilization of county services. This vital public

interest in the siting of county public buildings should not be wholly thwarted by often parochial local zoning regulations.

For example, the structure which houses the current Courthouse and county offices in Leelanau County was constructed in Leland, Michigan, roughly 120 years ago. In 1996, Leelanau County began planning to construct a much needed expansion to the existent court facilities and county offices. In fact, prior to adoption of any new zoning ordinances, the County applied for, paid for, and received a land use permit from Leland Township for the proposed expansion of the Court facility in the existent location in the unincorporated Village of Leland. However, a mere two months later, in August, 1996, Leland Township adopted new zoning regulations (the "New Zoning Regulations"). Under the New Zoning Regulations, Leland Township has "zoned out" County facilities in the unincorporated Village of Leland and instituted setback requirements which would bar any use for many of the parcels presently owned by the County. In 1996, Leelanau County applied for a special use permit from Leland Township which would have permitted the expansion of the courthouse. However, Leland Township denied that request. Thereafter, in 1996, Leelanau County applied to Leland Township in August, 2001 to rezone the property owned by Leelanau County to permit expansion of the court facilities in the unincorporated Village of Leland. However, notwithstanding the fact that over ten (10) months have passed, Leland Township has failed to act on Leelanau County's request. Thus, the County is effectively blocked, under the Court of Appeals' Decision, from going forward

the Court of Appeals' Decision.[4] In Deardon v Detroit, 403 Mich 257; 269 NW2d 139 (1978), this Court specifically addressed the public policy rationale belying permitting local zoning ordinances to dictate the placement of prisons. In fact, the Washtenaw County Circuit Court Decision recognized the public policy dangers inherent in the decision which was subsequently reached by the Court of Appeals:

> The fact that there is only one stated limitation, is evidence that the Legislature intended no other restriction on the authority of the County. As the case law indicates, another consideration used to determine if the state or its agencies has preempted a given field of regulation is whether the nature of the regulated subject matter demands exclusive state/county regulation to achieve the uniformity necessary to serve the state's purpose. **The establishment of sites for the erection of county buildings - similar to the erection of railroads, highways and penal institutions - demands exclusive state/county regulation. As the Court in Deardon aptly pointed out concerning the building of penal institutions, if the state/county were subject to the many and varied municipal zoning ordinances "the underlying policies of the general correctional system could be effectively thwarted by community after community prohibiting the placement of certain penal institutions in appropriate locations." Deardon at 266. That policy applies here concerning the placement of a homeless shelter for the support of the poor located in Washtenaw County.**

Washtenaw County Circuit Court Decision, Appendix p. 12A (Emphasis Supplied).

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[4] One need look no further than the experience of the State in the construction of prisons to foretell the difficulties which will be visited upon counties in the construction of statutorily required and needed county facilities such as jails. While this Court has held that the State does not have to submit to local zoning regulations in the construction of prisons, the Court of Appeals' Decision implicates that counties will need to so submit to local zoning regulations in the construction of jails. Amicus Curiae Michigan Township Association has previously argued that "This is not to say that the County is subject to the mere whim of the Township in regards to the provisions of the Township Zoning Ordinance as it is axiomatic that the Zoning Ordinance must be reasonable and non-exclusionary." Amicus Curiae Michigan Township Association, p. 12. However, where a township engages in unreasonable or exclusionary zoning, the sole recourse would be through the court system. The delay attendant in such proceedings would cause significant delay in the construction of necessary public improvements, to the detriment of the welfare of the public. Further, the concept of establishing that zoning is exclusionary is a difficult standard which does not consider whether a specific site of a county building is necessary for the greater public good.

The Court of Appeals' decision would have the effect of compelling a county to submit to the zoning regulations of a local unit of government, without any consideration as to whether the construction is in furtherance of a constitutionally required county function, and without any balancing as to the public necessity for, or benefit resulting from, the proposed site of the county building. However, a local unit of government (such as a township) is not held to the same rigorous standard when it constructs buildings in contravention of its own zoning regulations. Specifically, where a local unit of government constructs a building in violation of its own zoning ordinances, it is exempt (or immune) from the ordinance if the construction is part of a valid governmental function. Keiswetter v City of Petoskey, 124 Mich. App. 590, 335 NW2d 94 (1983)[5]:

> In Mainster v West Bloomfield Twp, this Court, based on the decision in Taber v Benton Harbor, held that a governmental unit is immune from the effect of its zoning ordinance if its use of the subject property is in the furtherance of a governmental, rather than a proprietary, function or if the proposed governmental projects are expressly exempt by the terms of the zoning ordinance.
>
> In the matter at bar, the zoning ordinance does not contain a provision which exempts defendant from the terms therein. Nevertheless, as the Mainster case delineated, if the municipality's violated use of the subject property is in pursuance of a governmental function, it would be exempt from the strictures of the ordinance.

Keiswetter,124 Mich. App. at 594, 595.

For the reasons fully set forth below, MAC respectfully requests this Honorable Court reverse the Court of Appeals' Decision and reinstate the Circuit Court Decision in that, as a matter of statutory construction, MCL 46.11(b) and (d); MSA 5.331(b) and (d) the Legislature has clearly granted counties, including Washtenaw County, exclusive

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[5] Keiswetter was decided after Deardon and appears to be the current law of the State.

jurisdiction to:

> (b) **Determine the site** of, ... or **designate a new site** for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat.
>
> and:
>
> (d) Erect the necessary buildings for jails, clerks'' offices, and other county buildings, and prescribe the time **and manner** of erecting them.

MCL 46.11(b) & (d); MSA 5.331 (b) & (d) (Emphasis supplied). As set forth below, the Legislature -- by granting the counties the unequivocal authority[6] to "determine the site of ... or designate a new site for a county building"-- have conveyed to counties exclusive jurisdiction to make such determinations or designations unfettered by local zoning ordinances. This conclusion is wholly consistent with the plain meaning of the statute, as well as rules of statutory construction.

In the alternative, MAC joins with Washtenaw County in espousing that this Court adopt a "balancing approach" test, which has been adopted by numerous other jurisdictions and which is widely espoused by legal scholars which would balance the legitimate interests of a county and township, and which would also weigh the greater public good.

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[6] Subject only to the statutory requirement in MCL 46.11(b); MSA 5.331(b) that situs of certain buildings be at the county seat.

ARGUMENT

I. THE COURT OF APPEALS' DECISION SHOULD RESPECTFULLY BE REVERSED IN THAT THE LEGISLATURE -- BY GRANTING COUNTIES THE POWER TO DETERMINE THE SITE OF ... OR DESIGNATE A NEW SITE FOR A COUNTY BUILDING"-- HAVE CONVEYED TO COUNTIES EXCLUSIVE JURISDICTION TO MAKE SUCH DETERMINATIONS OR DESIGNATIONS UNFETTERED BY LOCAL ZONING ORDINANCES.

A. The Current "Statutory Construction" Test Set Forth in Deardon and Its Progeny

There is no dispute here that the current Michigan test to determine whether a county is exempt from local zoning regulations is for this Court to examine MCL 46.11(b) & (d) and attempt to discern whether the Legislature intended to grant exclusive jurisdiction to the county to "determine the site...or designate a new site" for a county building. Deardon v Detroit, 403 Mich 257; 269 NW2d 139(1978); and Burt Twp v DNR, 459 Mich 659; 593 NW 2d 534 (1999). In order to convey such exclusive jurisdiction to the counties, the Legislature was not required to utilize the phrase "exclusive jurisdiction" in MCL 46.11, nor are any other "talismanic words" required by the Legislature to grant the requisite jurisdiction to the Counties. Burt, 459 Mich at 669.

B. The Plain Meaning Of MCL 46.11(b) & (d) Leads To The Conclusion That By Statutorily Granting Counties The Power To "Determine The Site Of" Or "Designate A New Site For" A County Building, The Legislature Has Conveyed To The Counties Exclusive Jurisdiction To Make Determinations Or Designations As To The Appropriate Site Of A County Building Unaffected By Local Zoning Ordinances.

In MCL 46.11(b) and (d); MSA 5.331(b) and (d), the Legislature has clearly granted counties, including Washtenaw County, exclusive jurisdiction to:

> (b) **Determine the site** of, ... or **designate a new site** for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat.
>
> and:

(d) Erect the necessary buildings for jails, clerks'' offices, and other county buildings, and prescribe the time **and manner** of erecting them.

The Court of Appeals[7] determined that the Legislature grant to the counties the authority to "determine the site of ... or designate a new site for a county building" was not exclusive jurisdiction over the decision on the situs of a county building. However, such interpretation respectfully ignores the plain meaning of MCL 46.11(b) & (d).

The Legislature granted counties the authority to "determine" the site of a county building. Webster's International Dictionary 3d, 1963, defines "determine," in relevant part, as: "To fix conclusively or authoritatively <a counsel was set up to determine national policy>." While we could locate no Michigan case defining the term "determine", other courts have defined the term "determine" consistent with the definition set forth above. For example in Woodward v Ross Packing Co, 139 P.2d 749 (Idaho 1943) the court concluded that the longstanding definition of the term "determine," in statutory construction, is

> 'To fix or settle definitely; make specific or certain; to decide the state or character of; *** to fix the form or character of; to shape; to prescribe imperatively; to regulate; to settle; to decide.' Words and Phrases, First Series, vol. 3, p. 2038, citing People v. Ham, 32 Misc. 517, 66 N.Y.S. 264, 266.

(Emphasis supplied). Thus, the authority of a county to "determine" the site of a county building confers upon the county the jurisdiction to "fix conclusively" such site based not upon local zoning regulations, but rather based upon a county's best judgement in weighing the public interest of the residents of the county. As stated in Nehrbas v

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[7] Relying on Burt Township v DNR, 459 Mich 659; 593 NW2d 534 (1999), Cody Park Ass'n v Royal Oak School District 116 Mich App 103; 321 NW2d 855 (1982), superceded by statute as noted in Burt Twp, 459 Mich 659; and Capital Region Airport Authority v Twp of DeWitt, 236 Mich App 576; 601 NW2d 141 (1999).

Incorporated Village of Lloyd Harbor, 2 NY2d 190, 140 NE 2d 241-243 (NY 1957):

> In the very nature of things, a municipality must have the power to select the site of building or other structures for the performance of its governmental duties. Accordingly, it necessarily follows, a village is not subject to zoning restrictions in the performance of its governmental, as distinguished from its corporate or proprietary, activities.

The Township's position and the Court of Appeals' Decision cannot be harmonized with the plain meaning of MCL 46.11(b) in that the Court of Appeals' Decision divests from counties their statutory authority to "determine the site" of a county building. Rather, under the Court of Appeals' Decision, the site of a county building will now be effectively determined by a township or other local municipality through operation of local zoning regulations. Thus, it will be local municipalities through their local zoning regulations -- not counties -- which "determine" the appropriate site for county buildings, if at all. This, simply, is contrary to the plain meaning of MCL 46.11.

The statutory grant of authority to "determine" the "site" of a county building and "manner" of erecting a county building which is granted to counties in MCL. 46.11 is more specific than the general authority to acquire real estate or construct harbors which this court found statutorily inadequate to grant exclusive jurisdiction in Burt Twp v Department of Natural Resources, 459 Mich 659; 593 NW2d 534 (1999). [8]

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[8] MAC acknowledges that the statute in Cody Park Ass'n v Royal Oak School District, 116 Mich App 103; 321 NW2d 855 (1982) superceded by statute as noted in Burt, 459 Mich at 664, ftn3 does express authority to "locate acquire, purchase, or lease in the name of the school district site or sites within or without the district for schools." However, notably, in Burt, 459 Mich at 664, ftn 3 this Court expressly noted: "We express no opinion on the results reached in these cases. However, we note that the decisions in Cody Park Ass'n, ... have since been "overruled" by subsequent legislative amendments of the statutes at issue in those cases." Clearly, in its quick action to statutorily overrule Cody (continued...)

In addition, it is well established that local zoning regulations are subordinate to otherwise permissible legislative enactments. Dearborn v Dept of Social Services, 327 NW2d 419; 120 Mich App 125 (1982). Thus, local zoning regulations would be subordinate to the Legislature's grant to counties of the authority to determine the site of county buildings. Contrary to the plain meaning of MCL 46.11(b) and (d), the Court of Appeals' Decision divests the authority from counties to "determine" or "designate" the situs of buildings by appraising the needs of the residents of the county, and choosing the situs for a building which best satisfies the public good. Rather, under the Court of Appeals' Decision, the "determination" of the situs of a county building will now be effectively made by townships or other local municipalities through the adoption of often parochial zoning regulations. This result is simply contrary to the plain meaning of MCL 46.11(b) and (d).

C. Under The Rules Of Statutory Construction, The Legislature -- By Solely Providing That The Only Exception To A County's Authority To "Determine" or "Designate" The Situs For A County Building Is That Such Exercise Of the Authority Is Statutorily Subject to "Any Requirement Of Law That The Building Be Located At The County Seat" Results In The Conclusion That A County Is Not Bound By Local Zoning Ordinances.

Buttressing the conclusion that MCL 46.11(b) & (d) vested counties with the authority to "determine the site of ... or designate a new site for a county building" hindered

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[8](...continued)
Park Ass'n, the Legislature evidenced the fact that its statutory grant of the authority to "locate" schools was, in fact, intended to grant exclusive jurisdiction to the school districts to make such determinations of the site of schools without being subject to local zoning regulations. This is persuasive evidence as to legislative intent of a grant of authority to "locate...sites" -- exclusively to counties which buttresses Washtenaw County and MAC's position before this Court.

by local zoning ordinances, the Legislature in MCL 46.11 (b) & (d) set forth a sole exception to counties' authority to "determine" or "designate" the situs for a county building:

> (b) Determine the site of, ... or designate a new site for a county building. The exercise of the authority granted by this subdivision is subject to any requirement of law that the building be located at the county seat.

MCL 46.11(b) (emphasis supplied).

Michigan has recognized the statutory rule of construction, "expressio unius est exclusio alterius" (the expression of one thing is the exclusion of another). United States Fidelity v Amerisure Ins Co, 195 Mich App 1, 6; 489 NW2d 115 (1992); Capital Regional Airport Auth. 236 Mich App at 594. Under this rule of construction, the fact that the Legislature specifically detailed one sole statutory confine on a county's authority to "determine" or "designate" the situs of a county building, leads to the conclusion that the Legislature did not intend additional statutory limitations (such as the Township Zoning Act, MCL 125.271 et seq.; MSA 5.2963(1) et seq.) to also limit a county's statutory grant of authority. If the Legislature, when it amended MCL 46.11 in 1998, had intended counties to be bound by the Township Zoning Act, it could have expressly set forth that intent. However, the absence of such further limitation, as a matter of statutory interpretation, leads to the inescapable conclusion that the county is not bound by the Township Zoning Act.[9]

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[9] Without in any way implicating any reservation as to the compelling force of Washtenaw County's and MAC's conviction that the Legislature has statutorily conveyed to counties exclusive jurisdiction to make determinations or designations as to the situs of all county buildings unfettered by local zoning ordinances, MAC feels it is appropriate to point out that it is possible under the existing statutes to uphold the Court of Appeals' Decision but limit the holding to the facts of this case.

(continued...)

II. IN THE ALTERNATIVE, MAC JOINS WITH WASHTENAW COUNTY IN ESPOUSING THAT THIS COURT ADOPT A "BALANCING APPROACH" TEST.

MAC fervently maintains that by granting the counties the unequivocal power to "determine the site of ... or designate a new site for a county building"-- the Legislature has conveyed to counties exclusive jurisdiction to make such determinations or designations unfettered by local zoning ordinances. However, MAC joins with Washtenaw County in submitting to this Court that in the unlikely event that the statutory language of MCL 46.11(b) & (d) is deemed insufficient to grant a county exclusive jurisdiction to determine the site of a county building, this Court consider adoption of a "balancing test" to mitigate the maelstrom which has, and will likely continue to result from the Court of Appeals' Decision. Specifically, absent an approach which at a minimum balances the public necessity for a county building at a specified location with the objections of the local entity, counties, the residents of counties and the greater public good will be subordinate to the often parochial interests of local municipalities. Recognizing this fact, commentators[10] and

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[9](...continued)
Initially, it would be possible for this Court to determine that a county under MCL 46.11 would retain the authority to "determine" the site of county buildings which for constitutionally or statutorily required county functions (such, inter alia, as courts and jails) would remain unfettered by local zoning ordinances. However, where there is no constitutional or statutory mandate that a county perform that governmental function (such as, for example, homeless shelters), a county would be bound by local zoning regulations.

[10] Note, Governmental Immunity From Local Zoning Ordinances, 84 HARV. L. REV. 869 (1971); Johnston, Recent Cases in the Law on Governmental Zoning Immunity: New Standards Designed to Maximize the Public Interest, 8 URB. LAW 327 (1976); Note, Governmental Immunity from Zoning, 22 B.C.L. REV. 783 (1981); Comment, Balancing Interest to Determine Governmental Exemption from Zoning Laws, 1973 U. ILL. L.F. 125.

a large number of states[11] have adopted and espoused a balancing test where a statutory grant of immunity from local zoning regulations is not explicit. This test is utilized, in large part, to assure that parochial zoning ordinances are not utilized to defeat the higher public good.

The Iowa Supreme Court in City of Ames v Story County, 392 NW2d 145 (Iowa 1986) set forth the purpose and general effect of the balancing of interest test:

> We are convinced that, although the application of the traditional tests may be easy for courts, they are hard for litigants. The present case gives a graphic example. Both local governments involved seem to proceed from the loftiest of motives and in the public interest. The proposed plant in some location is an obvious public necessity. The environmental concerns of both governments are factors of unquestioned importance. The resulting conflict should not turn on mere chance or on the perfunctory application of some test which is employed merely because it is simple. Until the legislature provides some clear direction otherwise we adopt the balancing of interest test to resolve zoning disputes that arise between local governments. ...
>
> Resolution under the balancing of interests test we have adopted will be more complex. The legitimate public interests of both the city and the county must be recognized and weighed in the balance. The county can have no absolute veto over the construction or placement of the plant. On the other hand the city cannot proceed oblivious of the county's authority to zone all county lands outside corporate boundaries. To whatever extent they can be, all conflicting governmental

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[11] Rutgers State Univ v Piluso, 60 NJ 142; 286 A2d 697 (NJ, 1972); Brownfield v State, 63 Ohio State 2d 282; 407 NE2d 1365 (1980) overruled on other grounds 28 Ohio St. 3d 317; 503 NE2d 1025 (1986); Hillsborough Ass'n for Retarded Citizens Inc v City of Temply Terrace, 332 So 2d 610 (Fla. 1976); Brown v Kansas Forestry, Fish and Game Comm'n, 2 Kan. App2d 102; 576 P2d 230 (1978); City of Fargo v Harwood Twp, 256 NW2d 694 (ND 1977); Indep. School Dist. No 89 v Oklahoma City, 722 P2d 1212 (Okla. 1986); Blackstone Park Improvement Ass'n v State Board of Standards and Appeals, 448 A2d 1233 (RI 1982); Lincoln Cnty v Johnson, 257 NW2d 453 (SD 1977); City of Ames v Story County, 392 NW2d 145 (Iowa, 1986); Town of Oronoco v City of Rochester, 293 Minn 468; 197 NW2d 426 (MINN 1972); In the Matter of the County of Monroe Compliance with Certain Zoning and Permit Requirements, 72 NY2d 338; 530 NE2d 202 (1988); City of Washington v Warren County, 899 SW2d 863 (MO. 1995);City of Crown Point v Lake County, 510 NE2d 684 (IND. 1987); Hayward v Gaston, 542 A2d 760 (DEL, 1988); County of Lake v Semmerling, 195 Ill App3d 93; 551 NE2d 1110 (1990).

interests must be accommodated. Where they cannot be accommodated the court is to resolve the dispute, after weighing the interests, on the basis of the greater public good.

(Emphasis supplied)

The specific factors to be weighed in a balancing test is aptly summarized in County of Monroe, 72 NE 2d, 333-334:

> The American Law Institute and a great many States have adopted a balancing of public interests approach to resolve such land use disputes (see, 4 Rathkopf, Zoning and Planning, at 53-48, n. 17 [4th ed.]; Model Land Dev.Code §§§§ 7-301, 7-304, 12-201). This balancing approach subjects the encroaching governmental unit in the first instance, in the absence of an expression of contrary legislative intent, to the zoning requirements of the host governmental unit where the extraterritorial land use would be employed (Rutgers State Univ v Piluso, 60 N.J. 142, 152, 286 A.2d 697, 702). Then, among the sundry related factors to be weighed in the test are: "the nature and scope of the instrumentality seeking immunity, the kind of function or land use involved, the extent of the public interest to be served thereby, the effect local land use regulation would have upon the enterprise concerned and the impact upon legitimate local interests" (id., 60 N.J. at 153, 286 A.2d, at 702). In Orange County v City of Apopka (299 So.2d 652, 655 [Fla.App.] 1974), the catalogue of potential factors to be considered by the reviewing court was expanded to include the applicant's legislative grant of authority, alternative locations for the facility in less restrictive zoning areas, and alternative methods of providing the needed improvement (see, Lincoln County v Johnson, 257 NW2d 453, 458 [S.D.] (1977); Blackstone Park Improvement Ass'n v Rhode Island Bd of Stds & Appeals, 448 A.2d 1233 [R.I.], supra) (1982). Another important factor is intergovernmental participation in the project development process and an opportunity to be heard. Realistically, one factor in the calculus could "be more influential than another or may be so significant as to completely overshadow all others", but no element should be "thought of as ritualistically required or controlling" (Rutgers State Univ v Piluso, 60 N.J. 142, 153, 286 A.2d 697, 703, supra).

(Emphasis supplied)

MAC is confident in the force of its position that by granting counties the unequivocal power to "determine the site of ... or designate a new site for a county building," the Legislature has conveyed to counties exclusive jurisdiction to make such determinations or designations based solely upon its determination of the public good, and not restricted by local zoning ordinances. MAC, however, joins with Washtenaw County in submitting to this Court that in the unlikely event that the statutory language of MCL 46.11 is deemed insufficient to grant a county exclusive jurisdiction to determine the site of a county building, that this Court adopt a balancing of interests test only were statutory authority is not specifically granted. Absent an approach which permits a neutral court to balance the public necessity for a county building at a specified location, counties, the residents of counties and the greater public good will be left without recourse when faced with parochial local zoning ordinances which significantly impede or bar the construction of county buildings vital to, and in locations necessary for, the greater public good.

CONCLUSION

For all of the above and foregoing reasons, the Amici Curiae, Michigan Association of Counties respectfully request that this Court reverse the ruling of the Court of Appeals and hold that the Legislature -- by granting counties the unequivocal power to "determine the site of ... or designate a new site for a county building"-- have conveyed to counties exclusive jurisdiction to make such determinations.

In the alternative, the Amici Curiae, Michigan Association of Counties respectfully request that this Court adopt a "balancing approach test" and either reverse the Court of Appeals' Decision or, conversely, remand this case to the Circuit Court to apply the factors of the balancing approach test.

Respectfully submitted:

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